

The Honorable Robert Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

HUNG DANG, M.D.,

Plaintiff,

v.

KIMBERLY MOORE, M.D., et al.,

Defendants.

NO. 3:21-cv-05544-RJB

STATE DEFENDANTS' ANSWER  
TO COMPLAINT FOR VIOLATION  
OF CIVIL RIGHTS AND  
EMPLOYMENT DISCRIMINATION  
WITH AFFIRMATIVE DEFENSES

JURY DEMAND

COME NOW Defendants Mark Johnson, William M. Brueggemann, Rick J. Glein, Roman S. Dixon, Jr., Debra L. Defreyn, Christina Pfluger, and Tim Slavin ("State Defendants,") by and through counsel, and, by way of Answer to Plaintiff's Complaint for Violation of Civil Rights and Employment Discrimination ("Complaint,") admit, deny, and allege as follows:

**I. PARTIES**

Section I of the Complaint purports to identify the parties to this lawsuit. It makes no factual allegations for which the State Defendants need answer.

**II. NATURE OF THE CASE**

1. Paragraph 1 of the Complaint makes no factual allegations for which the State Defendants need answer. To the extent any further answer is required, the State Defendants deny paragraph 1 of the Complaint and put Plaintiff to his proof.

2. Paragraph 2 of the Complaint makes no factual allegations for which the State Defendants need answer. To the extent any further answer is required, the State Defendants deny paragraph 2 of the Complaint and put Plaintiff to his proof.

3. The State Defendants deny paragraph 3 of the Complaint to the extent it makes allegations against them. To the extent paragraph 3 of the Complaint makes allegations against the Private Defendants, the State Defendants need make no answer therefor. To the extent any further answer is required, the State Defendants deny paragraph 3 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters set forth therein.

### III. JURISDICTION AND VENUE

4. Paragraph 4 of the Complaint alleges legal conclusions, not factual averments, for which the State Defendants need make no answer.

5. Paragraph 5 of the Complaint alleges legal conclusions, not factual averments, for which the State Defendants need make no answer.

### IV. STATEMENT OF THE CASE

6. The State Defendants deny paragraph 6 of the Complaint to the extent it makes allegations against them. To the extent paragraph 6 of the Complaint makes allegations against the Private Defendants, the State Defendants need make no answer therefor. To the extent any further answer is required, the State Defendants deny paragraph 6 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters set forth therein.

7. The State Defendants admit so much of paragraph 7 of the Complaint as alleges Plaintiff was licensed to practice medicine in Washington State in August 2008, specialized in otolaryngology, was employed by Group Health Cooperative during the events that led to his involvement with the Washington Medical Commission, and had no professional disciplinary history prior to his involvement with the Washington Medical Commission. Except to the extent

1 expressly herein, the State Defendants deny paragraph 7 of the Complaint for lack of information  
2 sufficient to establish the truth and veracity of the matters alleged.

3 8. Paragraph 8 of the Complaint makes no allegations against the State Defendants  
4 for which they need answer. To the extent any further answer is required, the State Defendants  
5 deny paragraph 8 of the Complaint for lack of information sufficient to establish the truth and  
6 veracity of the matters alleged.

7 9. Paragraph 9 of the Complaint makes no allegations against the State Defendants  
8 for which they need answer. To the extent any further answer is required, the State Defendants  
9 deny paragraph 9 of the Complaint for lack of information sufficient to establish the truth and  
10 veracity of the matters alleged.

11 10. Paragraph 10 of the Complaint makes no allegations against the State Defendants  
12 for which they need answer. To the extent any further answer is required, the State Defendants  
13 deny paragraph 10 of the Complaint for lack of information sufficient to establish the truth and  
14 veracity of the matters alleged.

15 11. Paragraph 11 of the Complaint makes no allegations against the State Defendants  
16 for which they need answer. To the extent any further answer is required, the State Defendants  
17 deny paragraph 11 of the Complaint for lack of information sufficient to establish the truth and  
18 veracity of the matters alleged.

19 12. Paragraph 12 of the Complaint makes no allegations against the State Defendants  
20 for which they need answer. To the extent any further answer is required, the State Defendants  
21 deny paragraph 12 of the Complaint for lack of information sufficient to establish the truth and  
22 veracity of the matters alleged.

23 13. Paragraph 13 of the Complaint makes no allegations against the State Defendants  
24 for which they need answer. To the extent any further answer is required, the State Defendants  
25 deny paragraph 13 of the Complaint for lack of information sufficient to establish the truth and  
26 veracity of the matters alleged.

1           14. Paragraph 14 of the Complaint makes no allegations against the State Defendants  
2 for which they need answer. To the extent any further answer is required, the State Defendants  
3 deny paragraph 14 of the Complaint for lack of information sufficient to establish the truth and  
4 veracity of the matters alleged.

5           15. Paragraph 15 of the Complaint makes no allegations against the State Defendants  
6 for which they need answer. To the extent any further answer is required, the State Defendants  
7 deny paragraph 15 of the Complaint for lack of information sufficient to establish the truth and  
8 veracity of the matters alleged.

9           16. Paragraph 16 of the Complaint makes no allegations against the State Defendants  
10 for which they need answer. To the extent any further answer is required, the State Defendants  
11 deny paragraph 16 of the Complaint for lack of information sufficient to establish the truth and  
12 veracity of the matters alleged.

13           17. Paragraph 17 of the Complaint makes no allegations against the State Defendants  
14 for which they need answer. To the extent any further answer is required, the State Defendants  
15 deny paragraph 17 of the Complaint for lack of information sufficient to establish the truth and  
16 veracity of the matters alleged.

17           18. Paragraph 18 of the Complaint makes no allegations against the State Defendants  
18 for which they need answer. To the extent any further answer is required, the State Defendants  
19 deny paragraph 18 of the Complaint for lack of information sufficient to establish the truth and  
20 veracity of the matters alleged.

21           19. Paragraph 19 of the Complaint makes no allegations against the State Defendants  
22 for which they need answer. To the extent any further answer is required, the State Defendants  
23 deny paragraph 19 of the Complaint for lack of information sufficient to establish the truth and  
24 veracity of the matters alleged.

25           20. Paragraph 20 of the Complaint makes no allegations against the State Defendants  
26 for which they need answer. To the extent any further answer is required, the State Defendants

1 deny paragraph 20 of the Complaint for lack of information sufficient to establish the truth and  
2 veracity of the matters alleged.

3 21. Paragraph 21 of the Complaint makes no allegations against the State Defendants  
4 for which they need answer. To the extent any further answer is required, the State Defendants  
5 deny paragraph 21 of the Complaint for lack of information sufficient to establish the truth and  
6 veracity of the matters alleged.

7 22. Paragraph 22 of the Complaint makes no allegations against the State Defendants  
8 for which they need answer. To the extent any further answer is required, the State Defendants  
9 deny paragraph 22 of the Complaint for lack of information sufficient to establish the truth and  
10 veracity of the matters alleged.

11 23. Paragraph 23 of the Complaint makes no allegations against the State Defendants  
12 for which they need answer. To the extent any further answer is required, the State Defendants  
13 deny paragraph 23 of the Complaint for lack of information sufficient to establish the truth and  
14 veracity of the matters alleged.

15 24. Paragraph 24 of the Complaint makes no allegations against the State Defendants  
16 for which they need answer. To the extent any further answer is required, the State Defendants  
17 deny paragraph 24 of the Complaint for lack of information sufficient to establish the truth and  
18 veracity of the matters alleged.

19 25. Paragraph 25 of the Complaint makes no allegations against the State Defendants  
20 for which they need answer. To the extent any further answer is required, the State Defendants  
21 deny paragraph 25 of the Complaint for lack of information sufficient to establish the truth and  
22 veracity of the matters alleged.

23 26. Paragraph 26 of the Complaint makes no allegations against the State Defendants  
24 for which they need answer. To the extent any further answer is required, the State Defendants  
25 deny paragraph 26 of the Complaint for lack of information sufficient to establish the truth and  
26 veracity of the matters alleged.

1           27. Paragraph 27 of the Complaint makes no allegations against the State Defendants  
2 for which they need answer. To the extent any further answer is required, the State Defendants  
3 deny paragraph 27 of the Complaint for lack of information sufficient to establish the truth and  
4 veracity of the matters alleged.

5           28. Paragraph 28 of the Complaint makes no allegations against the State Defendants  
6 for which they need answer. To the extent any further answer is required, the State Defendants  
7 deny paragraph 28 of the Complaint for lack of information sufficient to establish the truth and  
8 veracity of the matters alleged.

9           29. Paragraph 29 of the Complaint makes no allegations against the State Defendants  
10 for which they need answer. To the extent any further answer is required, the State Defendants  
11 deny paragraph 29 of the Complaint for lack of information sufficient to establish the truth and  
12 veracity of the matters alleged.

13           30. Paragraph 30 of the Complaint makes no allegations against the State Defendants  
14 for which they need answer. To the extent any further answer is required, the State Defendants  
15 deny paragraph 30 of the Complaint for lack of information sufficient to establish the truth and  
16 veracity of the matters alleged.

17           31. Paragraph 31 of the Complaint, and subparagraphs a. through d. thereunder, make  
18 no allegations against the State Defendants for which they need answer. To the extent any further  
19 answer is required, the State Defendants admit so much of paragraph 31 of the Complaint, and  
20 subparagraphs a. through d. thereunder, as are established by the Findings of Fact in the  
21 Washington Medical Commission's Final Order and Amended Final Order and deny paragraph  
22 31 of the Complaint, and subparagraphs a. through d. thereunder, in all other respects for lack of  
23 information sufficient to establish the truth and veracity of the matters alleged.

24           32. Paragraph 32 of the Complaint makes no allegations against the State Defendants  
25 for which they need answer. To the extent any further answer is required, the State Defendants  
26

1 deny paragraph 32 of the Complaint for lack of information sufficient to establish the truth and  
2 veracity of the matters alleged.

3 33. Paragraph 33 of the Complaint makes no allegations against the State Defendants  
4 for which they need answer. To the extent any further answer is required, the State Defendants  
5 admit so much of paragraph 33 of the Complaint as alleges Private Defendant Clark signed a  
6 June 16, 2014, letter to the CMS Division of Survey and Certification notifying of a potential  
7 EMTALA violation and identified Private Defendant Moore as a courtesy copy recipient of the  
8 letter and deny paragraph 33 of the Complaint in all other respects for lack of information  
9 sufficient to establish the truth and veracity of the matters alleged.

10 34. Paragraph 34 of the Complaint makes no allegations against the State Defendants  
11 for which they need answer. To the extent any further answer is required, the State Defendants  
12 deny paragraph 34 of the Complaint for lack of information sufficient to establish the truth and  
13 veracity of the matters alleged.

14 35. Paragraph 35 of the Complaint makes no allegations against the State Defendants  
15 for which they need answer. To the extent any further answer is required, the State Defendants  
16 deny paragraph 35 of the Complaint for lack of information sufficient to establish the truth and  
17 veracity of the matters alleged.

18 36. Paragraph 36 of the Complaint makes no allegations against the State Defendants  
19 for which they need answer. To the extent any further answer is required, the State Defendants  
20 deny paragraph 36 of the Complaint for lack of information sufficient to establish the truth and  
21 veracity of the matters alleged.

22 37. Paragraph 37 of the Complaint makes no allegations against the State Defendants  
23 for which they need answer. To the extent any further answer is required, the State Defendants  
24 deny paragraph 37 of the Complaint for lack of information sufficient to establish the truth and  
25 veracity of the matters alleged.  
26

1           38. Paragraph 38 of the Complaint makes no allegations against the State Defendants  
2 for which they need answer. To the extent any further answer is required, the State Defendants  
3 deny paragraph 38 of the Complaint for lack of information sufficient to establish the truth and  
4 veracity of the matters alleged.

5           39. Paragraph 39 of the Complaint makes no allegations against the State Defendants  
6 for which they need answer. To the extent any further answer is required, the State Defendants  
7 deny paragraph 39 of the Complaint for lack of information sufficient to establish the truth and  
8 veracity of the matters alleged.

9           40. Paragraph 40 of the Complaint makes no allegations against the State Defendants  
10 for which they need answer. To the extent any further answer is required, the State Defendants  
11 deny paragraph 40 of the Complaint for lack of information sufficient to establish the truth and  
12 veracity of the matters alleged.

13           41. Paragraph 41 of the Complaint makes no allegations against the State Defendants  
14 for which they need answer. To the extent any further answer is required, the State Defendants  
15 deny paragraph 41 of the Complaint for lack of information sufficient to establish the truth and  
16 veracity of the matters alleged.

17           42. Paragraph 42 of the Complaint makes no allegations against the State Defendants  
18 for which they need answer. To the extent any further answer is required, the State Defendants  
19 deny paragraph 42 of the Complaint for lack of information sufficient to establish the truth and  
20 veracity of the matters alleged.

21           43. Paragraph 43 of the Complaint makes no allegations against the State Defendants  
22 for which they need answer. To the extent any further answer is required, the State Defendants  
23 deny paragraph 43 of the Complaint for lack of information sufficient to establish the truth and  
24 veracity of the matters alleged.

25           44. Paragraph 44 of the Complaint makes no allegations against the State Defendants  
26 for which they need answer. To the extent any further answer is required, the State Defendants



1 deny paragraph 44 of the Complaint for lack of information sufficient to establish the truth and  
 2 veracity of the matters alleged.

3 45. Paragraph 45 of the Complaint makes no allegations against the State Defendants  
 4 for which they need answer. To the extent any further answer is required, the State Defendants  
 5 deny paragraph 45 of the Complaint for lack of information sufficient to establish the truth and  
 6 veracity of the matters alleged.

7 46. Paragraph 46 of the Complaint makes no allegations against the State Defendants  
 8 for which they need answer. To the extent any further answer is required, the State Defendants  
 9 deny paragraph 46 of the Complaint for lack of information sufficient to establish the truth and  
 10 veracity of the matters alleged.

11 47. Paragraph 47 of the Complaint makes no allegations against the State Defendants  
 12 for which they need answer. To the extent any further answer is required, the State Defendants  
 13 deny paragraph 47 of the Complaint for lack of information sufficient to establish the truth and  
 14 veracity of the matters alleged.

15 48. Paragraph 48 of the Complaint makes no allegations against the State Defendants  
 16 for which they need answer. To the extent any further answer is required, the State Defendants  
 17 deny paragraph 48 of the Complaint for lack of information sufficient to establish the truth and  
 18 veracity of the matters alleged.

19 49. Paragraph 49 of the Complaint makes no allegations against the State Defendants  
 20 for which they need answer. To the extent any further answer is required, the State Defendants  
 21 deny paragraph 49 of the Complaint for lack of information sufficient to establish the truth and  
 22 veracity of the matters alleged.

23 50. Paragraph 50 of the Complaint alleges legal conclusions, not factual averments,  
 24 for which the State Defendants need not answer. To the extent any further answer is required,  
 25 the State Defendants admit so much of paragraph 50 of the Complaint as accurately summarizes  
 26

1 federal law and court decisions interpreting federal law and deny paragraph 50 of the Complaint  
2 in all other respects.

3 51. The State Defendants admit so much of paragraph 51 of the Complaint as alleges  
4 the Washington State Medical Quality Assurance Commission (“MQAC”), now called the  
5 Washington Medical Commission (“WMC”) received a copy of Defendant Clark’s letter to the  
6 CMS Division of Survey and Certification and opened an investigation of the allegations therein  
7 and deny paragraph 51 of the Complaint in all other respects.

8 52. By way of answer to paragraph 52 of the Complaint, the State Defendants admit  
9 that Defendant Timothy H. Slavin is a retired employee of the State of Washington who worked  
10 as an investigator for MQAC, that Defendant Slavin contacted Dr. Clark to get further  
11 information about her letter to the CMS Division of Survey and Certification, including the  
12 identity of the provider referenced therein. Except to the extent expressly admitted herein, the  
13 State Defendants deny paragraph 52 of the Complaint.

14 53. By way of answer to paragraph 53 of the Complaint, the State Defendants admit  
15 Defendant Clark provided additional information to Defendant Slavin in July 2014 and deny  
16 paragraph 53 of the Complaint in all other respects.

17 54. The State Defendants deny paragraph 54 of the Complaint to the extent it makes  
18 allegations against them. To the extent paragraph 54 of the Complaint makes allegations against  
19 the Private Defendants, the State Defendants deny it for lack of information sufficient to verify  
20 the truth and veracity of the matters alleged.

21 55. By way of answer to paragraph 55 of the Complaint, the State Defendants admit  
22 Defendant Slavin sent Plaintiff three (3) letters: July 28, 2014, advising of the complaint and  
23 preliminary investigation and providing the information set forth in R.C.W. 18.130.095(2)(a);  
24 August 11, 2014, requesting a factual statement regarding Plaintiff’s refusal to accept or treat a  
25 patient; and August 25, 2014, reiterating the request made in the August 11 letter. Except to the  
26 extent expressly admitted herein, the State Defendants deny paragraph 55 of the Complaint.

1           56. By way of answer to paragraph 56 of the Complaint, the State Defendants admit  
2 Plaintiff faxed a letter to Defendant Slavin on September 2, 2014 in which he denied breaking  
3 any rules or laws. Except to the extent expressly admitted herein, the State Defendants deny  
4 paragraph 56 of the Complaint.

5           57. By way of answer to paragraph 57 of the Complaint, the State Defendants admit  
6 that Defendant Brueggemann is a physician, is board certified in emergency medicine, is a  
7 former commissioner of the WMC, and was the Reviewing Commission Member (“RCM”)  
8 assigned to the case involving Plaintiff. Except to the extent expressly admitted herein, the State  
9 Defendants deny paragraph 57 of the Complaint.

10           58. By way of answer to paragraph 58 of the Complaint, the State Defendants admit  
11 that on October 3, 2014, a panel of the WMC authorized expanding the investigation of  
12 allegations against Plaintiff and that on November 6, 2014, a panel of the WMC authorized  
13 issuance of a Statement of Allegations and a Stipulation to Informal Disposition to Plaintiff.  
14 Except to the extent expressly admitted herein, the State Defendants deny paragraph 58 of the  
15 Complaint.

16           59. The State Defendants deny the first sentence of paragraph 59 of the Complaint  
17 for lack of information sufficient to establish the truth and veracity of the matters alleged. The  
18 State Defendants deny the second sentence of paragraph 59 of the Complaint and specifically  
19 deny having engaged in unreasonable prosecution, unwelcome harassment, and intentional  
20 discrimination of the basis of race or any other protected characteristic.

21           60. The State Defendants admit so much of paragraph 60 of the Complaint as alleges  
22 a panel of the WMC authorized issuance of a Statement of Allegations and a Stipulation to  
23 Informal Disposition to Plaintiff on November 6, 2014, and the Statement of Allegations and  
24 Stipulation to Informal Disposition were signed on May 1, 2015 and deny paragraph 60 of the  
25 Complaint in all other respects.  
26

1           61. Paragraph 61 of the Complaint alleges legal conclusions, not factual averments,  
2 for which the State Defendants need not answer. To the extent any further answer is required,  
3 the State Defendants deny paragraph 61, putting Plaintiff to his proof.

4           62. The State Defendants deny paragraph 62 of the Complaint to the extent it makes  
5 allegations against the State Defendants and deny it in all other respects for lack of information  
6 sufficient to establish the truth and veracity of the matters alleged.

7           63. The State Defendants admit paragraph 63 of the Complaint to the extent it  
8 accurately paraphrases and quotes the exchange of emails between Plaintiff's attorney and  
9 Defendant Glein but deny paragraph 63 in all other respects, including its omission of Plaintiff's  
10 failure to respond to repeated requests for a written response prior to a settlement conference as  
11 required by R.C.W. 18.130.098.

12           64. The State Defendants admit paragraph 64 of the Complaint.

13           65. The State Defendants admit paragraph 65 of the Complaint to the extent it alleges  
14 Plaintiff's attorney served an Answer to Corrected Statement of Charges that was dated June 15,  
15 2016, and requested an adjudicative proceeding and deny it in all other respects.

16           66. The State Defendants admit the first sentence of paragraph 66 of the Complaint.  
17 The second sentence of paragraph 66 of the Complaint alleges a legal conclusion, not factual  
18 averments, for which the State Defendants need not answer. The State Defendants admit the  
19 third sentence of paragraph 66 of the Complaint.

20           67. The State Defendants admit paragraph 67 of the Complaint to the extent it alleges  
21 a settlement conference occurred and to the extent it accurately summarizes the content of the  
22 exchanges during the settlement conference and deny paragraph 67 of the Complaint in all other  
23 respects.

24           68. The State Defendants admit paragraph 67 of the Complaint to the extent it alleges  
25 the Washington Medical Commission offered to resolve its concerns about Plaintiff's physician  
26 conduct via proposed stipulated findings of fact, conclusions of law, and proposed order after

1 the settlement conference, which proposed settlement was rejected by Plaintiff. The remainder  
 2 of paragraph 68 of the Complaint alleges legal conclusions, not factual averments, for which the  
 3 State Defendants need not answer. To the extent any further answer is required, the State  
 4 Defendants deny paragraph 68 of the Complaint.

5 69. By way of answer to paragraph 69 of the Complaint, the State Defendants admit  
 6 MQAC's report to the National Practitioner Data Bank and the "Clerk's Summary" of the Final  
 7 Order speak for themselves and deny paragraph 69 of the Complaint in all other respects.

8 70. The State Defendants deny paragraph 70 of the Complaint.

9 71. Paragraph 71 of the Complaint alleges legal conclusions, not factual averments,  
 10 for which the State Defendants need not answer. To the extent any further answer is required,  
 11 the State Defendants deny the last two sentences of paragraph 71 of the Complaint.

12 72. Paragraph 72 of the Complaint makes no factual allegations for which the State  
 13 Defendants need answer. To the extent any further answer is required, the State Defendants deny  
 14 paragraph 72 of the Complaint.

15 73. The State Defendants deny paragraph 73 of the Complaint.

16 74. The State Defendants admit paragraph 74 of the Complaint.

17 75. The State Defendants deny paragraph 75 of the Complaint for lack of information  
 18 sufficient to establish the truth and veracity of the matters alleged and expressly deny paragraph  
 19 75 of the Complaint to the extent it alleges the State Defendants engaged in a "concerted effort,"  
 20 had a "meeting of the minds," had a "common objective of retaliation," or in any other way  
 21 violated Plaintiff's civil rights.

22 76. By way of answer to paragraph 76 of the Complaint, the State Defendants admit  
 23 Defendant Dixon was the Chief Health Law Judge presiding over Plaintiff's hearing and made  
 24 many evidentiary rulings in his capacity as a quasi-judicial officer and deny paragraph 76 of the  
 25 Complaint in all other respects.  
 26

1           77. The State Defendants admit paragraph 77 of the Complaint to the extent it  
2 accurate quotes Defendant Dixon and deny it in all other respects.

3           78. By way of answer to paragraph 78 of the Complaint, the State Defendants admit  
4 Defendant Dixon entered Post Hearing Order No. 1 on May 2, 2017, extending the deadline for  
5 the final order to May 26, 2017; that the Findings of Fact, Conclusions of Law, and Final Order  
6 were entered by the panel of the Washington Medical Commission on Friday, September 29,  
7 2017; and that the Washington Department of Health's Adjudicative Service Unit served the  
8 Final Order on Monday, October 2, 2017. Except to the extent expressly admitted herein, the  
9 State Defendants deny paragraph 78 of the Complaint.

10           79. The State Defendants admit paragraph 79 of the Complaint to the extent it alleges  
11 the Findings of Fact, Conclusions of Law, and Final Order were entered by the panel of the  
12 Washington Medical Commission on Friday, September 29, 2017, and that the Washington  
13 Department of Health's Adjudicative Service Unit served the Final Order on Monday, October  
14 2, 2017, and deny paragraph 79 of the Complaint in all other respects.

15           80. The State Defendants admit so much of paragraph 80 of the Complaint, and  
16 subparagraphs a. through h. thereunder, as accurately quote or paraphrase the Findings of Fact,  
17 Conclusions or Law, and Final Order entered by the Washington Medical Commission on  
18 September 29, 2017, and deny paragraph 80 of the Complaint, and subparagraphs a. through h.  
19 thereunder, in all other respects.

20           81. The State Defendants deny paragraph 81 of the Complaint.

21           82. The State Defendants admit paragraph 82 of the Complaint to the extent it  
22 accurately quotes footnote 23 of the Final Order entered on September 29, 2017,, and deny  
23 paragraph 82 of the Complaint in all other respects.

24           83. The State Defendants admit paragraph 83 of the Complaint to the extent it  
25 accurately quotes footnote 28 of the Final Order entered on September 29, 2017, and deny  
26 paragraph 83 of the Complaint in all other respects.

1           84.     The State Defendants deny paragraph 84 of the Complaint.

2           85.     The State Defendants admit paragraph 85 of the Complaint to the extent it  
3 accurately quotes Conclusion of Law 2.8 of the Final Order entered on September 29, 2017, and  
4 deny paragraph 85 of the Complaint in all other respects.

5           86.     The State Defendants deny paragraph 86 of the Complaint.

6           87.     The State Defendants admit the first sentence of paragraph 87 of the Complaint.  
7 The second sentence of paragraph 87 of the Complaint alleges legal conclusions, not factual  
8 averments, for which the State Defendants need not answer.

9           88.     The State Defendants admit paragraph 88 of the Complaint to the extent it alleges  
10 Plaintiff filed a Petition for Judicial Review with the King County Superior Court, cause no. 17-  
11 2-28129-8 KNT, on October 30, 2017, and deny paragraph 88 of the Complaint in all other  
12 respects.

13          89.     The State Defendants admit so much of paragraph 89 of the Complaint as alleges  
14 Defendants Dixon entered Post Hearing Order No. 2, establishing a briefing schedule on the  
15 WMC's petition for reconsideration, on November 1, 2017, and deny paragraph 89 of the  
16 Complaint in all other respects.

17          90.     The State Defendants admit paragraph 90 of the Complaint to the extent it  
18 accurately quotes footnote 2 of the Washington Medical Commission's Amended Final Order  
19 entered on December 20, 2017, and deny paragraph 90 of the Complaint in all other respects.

20          91.     By way of answer to paragraph 91 of the Complaint, the State Defendants admit  
21 the Washington Department of Health's Adjudicative Services Unit served the WMC's  
22 Amended Final Order of December 20, 2017, on December 21, 2017. Except to the extent  
23 expressly admitted herein, the State Defendants deny paragraph 91 of the Complaint.

24          92.     Paragraph 92 of the Complaint makes no factual averments for which the State  
25 Defendants need answer. To the extent any further answer is required, the State Defendants deny  
26

1 paragraph 92 of the Complaint for lack of information sufficient to establish the truth and  
 2 veracity of the matters alleged.

3 93. Paragraph 93 of the Complaint makes no factual averments for which the State  
 4 Defendants need answer. To the extent any further answer is required, the State Defendants deny  
 5 paragraph 93 of the Complaint for lack of information sufficient to establish the truth and  
 6 veracity of the matters alleged.

7 94. The State Defendants admit paragraph 94 of the Complaint to the extent it alleges  
 8 the King County Superior Court considered Plaintiff's Petition for Judicial Review on June 29,  
 9 2018, and accurately quotes the King County Superior Court's Order on Petition for Judicial  
 10 Review of August 9, 2018, and deny paragraph 94 of the Complaint in all other respects.

11 95. The State Defendants admit paragraph 95 of the Complaint.

12 96. The State Defendants admit paragraph 96 of the Complaint to the extent it alleges  
 13 Defendants Defreyn and Pfluger acted as attorneys representing the Washington Medical  
 14 Commission before the King County Superior Court and the Washington Court of Appeals,  
 15 Division I, during those court's considerations of Plaintiff's challenges to the actions of the  
 16 Washington Medical Commission in his case. Except to the extent expressly admitted herein,  
 17 the State Defendants deny paragraph 96 of the Complaint.

18 97. The State Defendants admit paragraph 97 of the Complaint.

19 98. By way of answer to paragraph 98 of the Complaint, the State Defendants admit  
 20 Defendants Defreyn and Pfluger advocated on behalf of the WMC before the Court of Appeals,  
 21 including addressing challenges to the WMC's Amended Final Order, which the Court of  
 22 Appeals affirmed. Except to the extent expressly admitted herein, the State Defendants deny  
 23 paragraph 98 of the Complaint, including specifically denying Defendant Johnson served as a  
 24 commissioner with the WMC after the expiration of his term in 2017.

25 99. The State Defendants admit paragraph 99 of the Complaint.

26 100. The State Defendants admit paragraph 100 of the Complaint.



101. The State Defendants deny paragraph 101 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters alleged, and expressly denying the State Defendants are personally involved in the WMC's compliance activity related to Plaintiff.

## V. INJURIES<sup>1</sup>

102. Paragraph 96 of the Complaint makes no factual averments for which the State Defendants need answer. To the extent any further answer is required, the State Defendants deny paragraph 96 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters alleged.

103. The State Defendants deny paragraph 97 of the Complaint.

104. The State Defendants deny paragraph 98 of the Complaint.

105. The State Defendants deny paragraph 99 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters alleged and specifically deny the State Defendants have any role in reporting information to the NPDB.

106. The State Defendants deny paragraph 100 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters alleged and specifically deny the State Defendants have any role in reporting information to the NPDB.

107. The State Defendants deny paragraph 101 of the Complaint for lack of information sufficient to establish the truth and veracity of the matters alleged.

## VI. CAUSES OF ACTION

108. By way of answer to paragraph 102 of the Complaint, the State Defendants incorporate by this reference, as though fully set forth herein, their answers to paragraphs 1 through 101 of the Complaint as set forth in paragraphs 1 through 107 above.

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<sup>1</sup> Plaintiff's Complaint appears to have recurring scrivener's errors in that it numbers paragraphs following 101, beginning with a repeat of "96." The State Defendants will refer to the paragraph numbers used in the Complaint.

FIRST CAUSE OF ACTION -- VIOLATION OF 42 U.S.C. §1983

109. The State Defendants deny paragraph 103 of the Complaint.

110. To the extent paragraph 104 of the Complaint makes allegations against the State Defendants, the State Defendants deny the same. The State Defendants deny paragraph 104 of the Complaint in all other respects for lack of information sufficient to establish the truth and veracity of the matters alleged.

111. To the extent paragraph 105 of the Complaint makes allegations against the State Defendants, the State Defendants deny the same. The State Defendants deny paragraph 105 of the Complaint in all other respects for lack of information sufficient to establish the truth and veracity of the matters alleged.

112. To the extent paragraph 106 of the Complaint makes allegations against the State Defendants, the State Defendants deny the same. The State Defendants deny paragraph 106 of the Complaint in all other respects for lack of information sufficient to establish the truth and veracity of the matters alleged.

113. Paragraph 107 of the Complaint makes no factual averments for which the State Defendants need answer. To the extent any further answer is required, the State Defendants deny paragraph 107 of the Complaint as alleged against the State Defendants and deny paragraph 107 of the Complaint in all other respects for lack of information sufficient to establish the truth and veracity of the matters alleged.

114. The State Defendants deny paragraph 108 of the Complaint.

115. The State Defendants deny paragraph 109 of the Complaint.

116. The State Defendants deny paragraph 110 of the Complaint.

117. The State Defendants deny paragraph 111 of the Complaint.

SECOND CAUSE OF ACTION -- VIOLATION OF 42 U.S.C. §1981

118. Paragraph 112 of the Complaint makes no allegations against the State Defendants for which they need answer. To the extent any further answer is required, the State

1 Defendants deny paragraph 112 of the Complaint for lack of information sufficient to establish  
 2 the truth and veracity of the matters alleged.

3 119. Paragraph 113 of the Complaint makes no allegations against the State  
 4 Defendants for which they need answer. To the extent any further answer is required, the State  
 5 Defendants deny paragraph 113 of the Complaint for lack of information sufficient to establish  
 6 the truth and veracity of the matters alleged.

7 120. Paragraph 114 of the Complaint makes no allegations against the State  
 8 Defendants for which they need answer. To the extent any further answer is required, the State  
 9 Defendants deny paragraph 114 of the Complaint for lack of information sufficient to establish  
 10 the truth and veracity of the matters alleged.

11 121. Paragraph 115 of the Complaint makes no allegations against the State  
 12 Defendants for which they need answer. To the extent any further answer is required, the State  
 13 Defendants deny paragraph 115 of the Complaint for lack of information sufficient to establish  
 14 the truth and veracity of the matters alleged.

15 122. Paragraph 116 of the Complaint makes no allegations against the State  
 16 Defendants for which they need answer. To the extent any further answer is required, the State  
 17 Defendants deny paragraph 116 of the Complaint for lack of information sufficient to establish  
 18 the truth and veracity of the matters alleged.

19 THIRD CAUSE OF ACTION -- VIOLATION OF 42 U.S.C. §1985(3)

20 123. To the extent paragraph 117 of the Complaint makes allegations against the State  
 21 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 117 of  
 22 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 23 veracity of the matters alleged.

24 124. To the extent paragraph 118 of the Complaint makes allegations against the State  
 25 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 118 of  
 26

1 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 2 veracity of the matters alleged.

3 125. To the extent paragraph 119 of the Complaint makes allegations against the State  
 4 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 119 of  
 5 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 6 veracity of the matters alleged

7 126. To the extent paragraph 120 of the Complaint makes allegations against the State  
 8 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 120 of  
 9 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 10 veracity of the matters alleged

11 FOURTH CAUSE OF ACTION -- VIOLATION OF WASHINGTON STATE  
 12 CONSTITUTION, CIVIL RIGHTS ACT RCW 49.60.030, ADMINISTRATIVE  
 13 PROCEDURE ACT RCW 34.05, AND CONSUMER PROTECTION ACT RCW 19.86

14 127. To the extent paragraph 121 of the Complaint makes allegations against the State  
 15 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 121 of  
 16 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 17 veracity of the matters alleged

18 128. To the extent paragraph 122 of the Complaint makes allegations against the State  
 19 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 122 of  
 20 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 21 veracity of the matters alleged

22 129. To the extent paragraph 123 of the Complaint makes allegations against the State  
 23 Defendants, the State Defendants deny the same. The State Defendants deny paragraph 123 of  
 24 the Complaint in all other respects for lack of information sufficient to establish the truth and  
 25 veracity of the matters alleged  
 26

**VII. PRAYER FOR RELIEF**

Section VII of Plaintiff's Complaint, and the paragraphs and subparagraphs thereunder, make no factual averments for which the State Defendants need answer. To the extent any further answer is required, the State Defendants deny section VII of Plaintiff's Complaint and the paragraphs and subparagraphs thereunder, putting Plaintiff to his proof.

**AFFIRMATIVE DEFENSES**

NOW, THEREFORE, having fully answered the allegations of the Complaint, and by way of further Answer, the State Defendants allege the following Affirmative Defenses:

A. Defendant Johnson is not currently a commissioner of the Washington Medical Commission and, as such, Plaintiff's claims against Defendant Johnson, in his official capacity, fail to state claims for which the Court can grant relief.

B. Plaintiff's failure to satisfy the requirements of *Ex parte Young* deprives the court of personal jurisdiction for purposes of imposing injunctive relief against a Washington Medical Commission member in their official capacity in accordance with the Eleventh Amendment.

C. The *Rooker-Feldman* doctrine deprives the Court of subject matter jurisdiction to entertain Plaintiff's challenges to the Amended Final Order of the Washington Medical Commission that have already been reviewed and rejected by the courts of Washington State and the U.S. Supreme Court.

D. Plaintiff has failed to state a claim of conspiracy against any of the State Defendants given a failure to identify personal involvement by any of the State Defendants and failure to allege facts related to a conspiracy.

E. Defendants Johnson and Dixon enjoy absolute quasi-judicial immunity.

F. Defendants Brueggemann, Glein, Defreyn, and Pfluger enjoy absolute quasi-prosecutorial immunity.

G. All of the State Defendants enjoy qualified immunity.

H. Plaintiff's claims are barred by collateral estoppel.

1 I. Plaintiff's claims are barred by *res judicata*.

2 J. Plaintiff's claims under 42 U.S.C. §§ 1981, 1983, and 1985 are barred by the  
3 applicable three-year statute of limitations.

4 K. Plaintiff has failed to state a claim for damages for alleged violations of the  
5 Washington Constitution.

6 L. Plaintiff has failed to state a claim for damages for alleged violations of the  
7 Washington Administrative Procedures Act.

8 M. Plaintiff has failed to state a claim for damages for alleged violations of the  
9 Washington Consumer Protection Act.

10 N. Plaintiff's prayers for injunctive relief fail to identify prospective conduct that  
11 will address on-going constitutional rights violations.

12 O. The State Defendants' alleged actions and omissions were reasonable under the  
13 circumstances and do not support liability under Washington or federal law.

14 P. Plaintiff has failed to state a claim for prevailing attorneys' fees in this action as  
15 Plaintiff is currently pro se.

16 **JURY DEMAND**

17 The State Defendants demand trial by jury of all issues triable of right by jury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, having fully answered the allegations of the Complaint, having alleged  
20 Affirmative Defenses, and having demanded trial by jury, the State Defendants pray for the  
21 following relief:

22 1. That Plaintiff's Complaint, to the extent alleged against the State Defendants, be  
23 dismissed, in its entirety, with prejudice, and that Plaintiff takes nothing thereby;

24 2. For an award of attorneys' fees and costs to the fullest extent allowed by law or  
25 in equity; and  
26

1           3.       For such other and further relief as the Court deems just and equitable.

2       DATED this 27th day of October, 2021.

3                               ROBERT W. FERGUSON  
4                               Attorney General

5                               s/ Scott M. Barbara  
6                               SCOTT M. BARBARA, WSBA No. 20885  
7                               Assistant Attorney General - Torts Division  
8                               800 Fifth Ave, Ste 2000  
9                               Seattle, WA 98104  
10                              Tel.:     206-389-2033  
11                              Fax:     206-587-4229  
12                              Email:   [scott.barbara@atg.wa.gov](mailto:scott.barbara@atg.wa.gov)  
13                              Attorneys for State Defendants

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served on the following persons in the manner indicated on this 27th day of October, 2021.

<u>Party</u>	<u>Method of Service</u>
Hung Dang 27222 10th Ave S Des Moines, WA 98198 <a href="mailto:hdang72@gmail.com">hdang72@gmail.com</a> <a href="mailto:hungdang007@gmail.com">hungdang007@gmail.com</a> <i>Plaintiff Pro-Se</i>	<input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Email <input type="checkbox"/> Certified Mail Postage Prepaid <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> State Campus Mail <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> UPS Next Day Air <input type="checkbox"/> By Fax <input type="checkbox"/> Hand delivered by:
Donald L. Samuels, WSBA 56214 Polsinelli PC 1000 Second Avenue, Suite 3500 Seattle WA 98104 <a href="mailto:DSamuels@Polsinelli.com">DSamuels@Polsinelli.com</a> <a href="mailto:EGaskins@Polsinelli.com">EGaskins@Polsinelli.com</a> <a href="mailto:jditullio@polsinelli.com">jditullio@polsinelli.com</a> <a href="mailto:mWashington@polsinelli.com">mWashington@polsinelli.com</a> <a href="mailto:vlehan@polsinelli.com">vlehan@polsinelli.com</a> <i>Attorneys for Defendants Moore, Clark, Adams, Patel</i>	<input type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Email <input type="checkbox"/> Certified Mail Postage Prepaid <input checked="" type="checkbox"/> CM/ECF <input type="checkbox"/> State Campus Mail <input type="checkbox"/> ABC/Legal Messenger <input type="checkbox"/> UPS Next Day Air <input type="checkbox"/> By Fax <input type="checkbox"/> Hand delivered by:

s/ Scott M. Barbara  
 SCOTT M. BARBARA, WSBA No. 20885  
 Assistant Attorney General  
 Attorney for State Defendants